

THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

THE UNITED STATES OF AMERICA,

Plaintiff,

v.

Case No. 1:20-CR-183

Hon. Robert J. Jonker
Chief U.S. District Court Judge

ADAM DEAN FOX,
BARRY GORDON CROFT, JR.,
DANIEL JOSEPH HARRIS,
BRANDON MICHAEL-RAY CASERTA,
KALEB JAMES FRANKS,

Defendants.

DEFENDANTS' MOTION FOR ENDS-OF-JUSTICE CONTINUANCE

Defendants, through counsel, move this Court to continue the scheduled dates in this case for a period of ninety (90) days in order to allow full preparation of a defense.

IN SUPPORT THEREOF, Defendant states:

1. Defendants were charged on October 6, 2020, with offenses related to an alleged plan to kidnap Michigan Governor Gretchen Whitmer.
2. An indictment was returned on this charge in December of 2020.
3. A superseding indictment was returned in April of 2021, adding charges against defendants Fox, Croft, and Harris, including in part a charge of conspiracy to use a weapon of mass destruction.
4. Trial is scheduled to begin on October 12, 2021.

5. The discovery in the case is extensive, consisting of at least 3.4 TB after de-duplication. Some items were produced at least 15 times with different file names, leading to significant confusion as defendants sought to evaluate the discovery.

6. The government has provided discovery on at least four separate dates, including in February, April, June, and August of 2021.

7. The most recent production was in excess of 2 TB.

8. The timing and organization of the discovery productions have created significant problems for the defense in preparing for the current trial date.

9. For example, the government has provided media files of differing sizes. The files are numbered 1-128, with some numbers missing. Media files 66, 67, 71, 72, 80, 83, and 119 are missing and the defendants are unaware of where or how to find the files.

10. Investigative work by the defense is complicated by the government's extensive use of confidential human sources and undercover FBI agents.

11. Discovery includes, in part, more than 1,000 hours of audio surveillance recordings, separate GPS audio recordings, and converted HAWK audio files.

12. The government has represented to counsel that it intends to introduce into evidence a substantial amount of the recordings.

13. Many of the recordings involve overlapping speakers and are of poor quality.

14. Defendants have retained a court reporter to transcribe selected audio surveillance clips for use at trial.

15. Defendants have identified approximately 25 hours of audio clips for transcription to date.

16. Defendants intend to use the transcripts as part of the presentation of substantive evidence, for impeachment, and for other purposes allowed by the rules of evidence.

17. The transcripts are necessary and material to the presentation of the defendants' cases at trial.

18. The transcriptionist reports approximately 20% of the total volume of audio clips identified by the defendants have been transcribed.

19. Defendants currently have no completed transcripts.

20. It is not likely that the scope of work, as currently defined, can be completed prior to the final pretrial conference on September 23, 2021, or the commencement of the jury trial on October 12, 2021.

21. Defendants have requested transcripts from the government to avoid duplicate transcription efforts. To date, no transcripts have been received.

22. Defendants are investigating recent developments relating to the conduct of FBI agents involved in the case, and it will be difficult to complete this investigation before the scheduled trial date.

23. The defendants recently lost their expert in the area of military tactics. Michael Hills, on behalf of Brandon Caserta, was able to retain an expert in the area of military tactics and training. On August 30, 2021, the expert told Hills that, due to the publicity of the case, he was not willing to testify at trial. The defense attorneys

as a group have been trying to replace this expert, but as of this writing only have leads but no commitment.

24. For all these reasons, the ends of justice require a continuance of the trial date in this case.

WHEREFORE, the defendants request this Court continue the final pretrial and trial dates in this case for a period of ninety (90) days to dates convenient to the Court's schedule.

Date: September 8, 2021

SCOTT GRAHAM PLLC

By: /s/ Scott Graham
Scott Graham
Attorney for Defendant Franks
Business Address:
1911 West Centre Avenue, Suite C
Portage, Michigan 49024
(269) 327.0585

Date: September 8, 2021

By: /s/ Scott Graham, with consent, for
Christopher Gibbons
Attorney for Defendant Fox

Date: September 8, 2021

By: /s/ Scott Graham, with consent, for
Joshua A. Blanchard
Attorney for Defendant Croft

Date: September 8, 2021

By: /s/ Scott Graham, with consent, for
Julia Kelly
Attorney for Defendant Harris

Date: September 8, 2021

By: /s/ Scott Graham, with consent, for
Michael Hills
Attorney for Defendant Caserta